IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2769 OF 2006

The Maharashtra State Co-operative Bank Ltd. ...Petitioner

V/s.

The State of Maharashtra ...Respondent

Mr.P.D. Dalvi i/b. Mr.Nana D. Yelkar for the Petitioner.
Mrs.M.M. Deshmukh, APP for the State.

CORAM : V.M. KANADE, J.

DATED : OCTOBER 16, 2007

P.C. :-

. Rule. Rule is made returnable forthwith by consent of parties. The matter is taken up for hearing.

2. Heard the learned Counsel for the petitioner and the learned APP for the State.

3. The original complainant had filed a complaint after some unknown persons committed dacoity at the branch and decamped with an amount of Rs.7,35,715/- and accordingly, FIR was lodged with the Borivali Police Station. During the course of investigation, an amount of Rs.2,87,800/- in the form of currency notes was recovered by the police from the accused. During the

pendency of the appeal, an application was filed by the complainant-Bank for the return of the said amount. Accordingly, the trial Court by order dated 11th February, 2000 was pleased to direct that the currency notes which were seized be returned to the applicant Bank on their executing a Bond for Rs.2,87,000/-, however, a condition was imposed that the said cash was to be deposited in the court as and when required. Further directions were given that the Investigating Officer should keep the record regarding the serial numbers of the seized currency notes and the certified xerox copies of the first and the last note of the bundle should also be placed on record. Accordingly, the said currency notes were returned. Thereafter, another application was filed by the bank seeking permission of the court to use the said currency notes in their banking transaction. The Sessions Court, however, rejected the said application. Being aggrieved by the aforesaid order, the Bank has preferred this writ petition under Article 227 of the Constitution of India.

4. The learned Counsel for the petitioner submitted

that the panchnama has already been made by the police after the said notes were seized from the accused. The xerox copies of the notes also have been taken pursuant to the direction which was given by the Magistrate while releasing the said currency notes. He submitted that therefore, there was no impediment in permitting the bank in using the said currency notes as Indemnity Bond has already been given by the bank to the Court. In support of the said submission, he has relied on the judgment of the Apex Court in the case of **Sunderbhai Ambalal Desai v/s. State of Gujarat reported in 2003 SCC (Cri.) 1943.**

5. The learned APP, Mrs.Deshmukh, for the State has vehemently opposed the submission made by the learned Counsel for the petitioner. She has strenuously urged that these currency notes would be required at the trial and therefore, if the Bank is permitted to use these currency notes, the original currency notes would not be available for identification at the time of the trial.

6. After having heard the learned Counsel for the

petitioner and the learned APP for the State, I am of the view that the petitioner-bank entitled to use these currency notes which have been returned. Admittedly, a panchnama had been made by the police when the said notes were seized from the accused. Further, serial numbers of the notes also have been recorded. Apart from that, xerox copies of the first and last note of each bundle also have been made. The Apex Court in the case of **Sunderbhai Ambalal Desai (supra)** was pleased to consider the provisions of Sections 451 and 457 of the Cr.P.C. and more particularly, the purpose of the exercise of the powers vested in the said section as also the procedure which is required to be followed by the police for the custody and disposal of the valuable articles and currency notes, vehicles, seized liquor and narcotic drugs. It would be relevant to take into consideration the observation made by the Apex Court in respect of the said provisions. In para 8, the Apex Court has considered the observations made by the Apex Court in the case of **Basavva Kom Dyamangouda Patil V. State of Mysore, reported in (1977) 4 SCC 358** wherein the Apex Court in the said judgment had observed the

scope, object and scheme of various provisions of the Code and had observed that the property which is seized by the police should not be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. After having the locus laid down by the ratio of the Apex Court judgment, the Apex Court has considered what is to be done in respect of valuable articles and currency notes. In para 12, the Apex Court has observed as under :-

> "12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:
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> (1) preparing detailed proper panchnama of such articles;
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> (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and
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> (3) after taking proper security."

7. In the present case, admittedly, seized property belongs to the petitioner Bank. A panchnama has already been made by the police. Photographs, xerox copies have

been made of the said articles. Under the circumstances, in my view, no prejudice will be caused if the petitioner Bank is permitted to use this cash which has been returned. The impugned order passed by the trial Court, accordingly, is set aside. The Criminal Writ Petition is allowed in terms of prayer clause (a).

. Writ Petition is, accordingly, disposed of.

(V.M. KANADE, J.)